

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**SYNOVUS BANK, formally known as)
Columbus Bank and Trust Company, as)
successor in interest through name change)
by merger with Community Bank and)
Trust of Southeast Alabama d/b/a Coastal)
Bank and Trust,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO. _____
)
**CROSSROADS LLC, ROBERT T.)
CUNNINGHAM, III, CLARENCE)
BURKE, JR., JOHN B. FOLEY, IV,)
PENNSTAR, L.L.C., WOLF CREEK)
INDUSTRIES, INC.****

Defendants.

COMPLAINT

COMES NOW, plaintiff, Synovus Bank, formally known as Columbus Bank and Trust Company, as successor in interest through name change and by merger with Community Bank and Trust of Southeast Alabama d/b/a Coastal Bank and Trust ("Synovus"), and for its complaint against Crossroads LLC ("Crossroads"), Robert T. Cunningham, III ("Cunningham"), Clarence Burke, Jr. ("Burke"), John B. Foley, IV ("Foley"), Pennstar, L.L.C. ("Pennstar"), and Wolf Creek Industries, Inc. ("Wolf Creek", and together with Crossroads, Cunningham, Burke, Foley and Pennstar, the "Defendants"), states as follows:

JURISDICTION AND VENUE

1. Synovus is a Georgia banking corporation whose principal place of business is located in the State of Georgia.

2. Defendant Crossroads is a limited liability company organized according to the laws of the State of Alabama, having its principal place of business in Baldwin County, Alabama. Upon information and belief, the members of Crossroads are Thomson, L.L.C. (a limited liability company organized according to the laws of the State of Alabama with all members residing in the State of Alabama), Foley and Pennstar.

3. Defendant Pennstar is a limited liability company organized according to the laws of the State of Alabama, having its principal place of business in Baldwin County, Alabama. Upon information and belief, the members of Pennstar are Alliance, Ltd. (a limited partnership organized according to the laws of the State of Alabama, with the general and limited partners residing in the State of Alabama), and Wolf Creek.

4. Defendant Wolf Creek is a corporation organized according to the laws of the State of Alabama, having its principal place of business in Baldwin County, Alabama.

5. Defendant Cunningham is an adult citizen of the State of Alabama, residing in Baldwin County, Alabama.

6. Defendant Burke is an adult citizen of the State of Alabama residing in Baldwin County, Alabama.

7. Defendant Foley is an adult citizen of the State of Alabama, residing in Baldwin County, Alabama.

8. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00 and complete diversity exists between Synovus on the one hand and the Defendants on the other.

9. This Court has original jurisdiction of this case pursuant to 28 U.S.C. § 1332.

10. Venue is proper pursuant to 28 U.S.C. § 1391(a), because *inter alia*, the Defendants reside within this judicial district.

STATEMENT OF FACTS

11. Synovus made a loan to Crossroads ("Loan 1") as evidenced by that certain Promissory Note dated October 2, 2008 made by Crossroads payable to Synovus in the maximum principal amount of \$1,875,000.00 (as amended from time to time, "Note 1"). A true and correct copy of Note 1 is attached hereto as **Exhibit A** and is incorporated herein by reference.

12. Additionally, Synovus made a loan to Crossroads ("Loan 2", and together with Loan 1, the "Loans") as evidenced by that certain Promissory Note dated January 7, 2010 made by Crossroads payable to Synovus in the maximum

principal amount of \$1,098,643.13 (as amended from time to time, "Note 2", and together with Note 1, the "Notes"). A true and correct copy of Note 2 is attached hereto as **Exhibit B** and is incorporated herein by reference.

13. In addition to the obligations of Crossroads to pay the principal of and interest on the Loans, the Notes provide that the holder thereof is entitled to recover its costs and expenses, including reasonable attorneys' fees of up to 15% of the unpaid debt, incurred in collecting the amounts due thereunder.

14. The Loans are unconditionally, jointly and severally guaranteed by Cunningham, Burke, Foley, Pennstar and Wolf Creek (collectively, the "Guarantors"). The guaranty of Cunningham is evidenced by, *inter alia*, that certain Guaranty Agreement dated January 7, 2010 (the "Cunningham Guaranty") made by Cunningham in favor of Synovus. A true and correct copy of the Cunningham Guaranty is attached hereto as **Exhibit C** and is incorporated herein by reference. The guaranty of Burke is evidenced by, *inter alia*, that certain Guaranty Agreement dated January 7, 2010 (the "Burke Guaranty") made by Burke in favor of Synovus. A true and correct copy of the Burke Guaranty is attached hereto as **Exhibit D** and is incorporated herein by reference. The guaranty of Foley is evidenced by, *inter alia*, that certain Guaranty Agreement dated January 7, 2010 (the "Foley Guaranty") made by Foley in favor of Synovus. A true and correct copy of the Foley Guaranty is attached hereto as **Exhibit E** and

is incorporated herein by reference. The guaranty of Pennstar is evidenced by, *inter alia*, that certain Guaranty Agreement dated January 7, 2010 (the "Pennstar Guaranty") made by Pennstar in favor of Synovus. A true and correct copy of the Pennstar Guaranty is attached hereto as **Exhibit F** and is incorporated herein by reference. The guaranty of Wolf Creek is evidenced by, *inter alia*, that certain Guaranty Agreement dated January 7, 2010 (the "Wolf Creek Guaranty", together with the Cunningham Guaranty, the Burke Guaranty, the Foley Guaranty and the Pennstar Guaranty, the "Guarantees") made by Wolf Creek in favor of Synovus. A true and correct copy of the Wolf Creek Guaranty is attached hereto as **Exhibit G** and is incorporated herein by reference. The Notes together with the Guarantees and any other documents or instruments evidencing or securing the Loans, are collectively referred to herein as the "Loan Documents."

15. By letter dated May 13, 2011 (the "Demand Letter"), Synovus made final demand on Defendants for payment in full of all amounts owing pursuant to the Loan Documents. A true and correct copy of the Demand Letter is attached hereto as **Exhibit H** and incorporated herein by reference.

16. Despite the Demand Letter, Defendants have failed and refused to pay all amounts due under the Loan Documents.

17. The amount outstanding on Loan 1 as of June 20, 2011, exclusive of expenses of collection, attorneys' fees and the costs of this action, is \$1,813,327.20,

which includes outstanding principal in the amount of \$1,756,000.00, accrued and unpaid interest in the amount of \$54,995.69 and fees in the amount of \$2,331.51. Interest continues to accrue daily at the rate provided in Note 1. Attorneys' fees and other costs of collection also continue to accrue.

18. The amount outstanding on Loan 2 as of June 20, 2011, exclusive of expenses of collection, attorneys' fees and the costs of this action, is \$1,153,635.06, which includes outstanding principal in the amount of \$1,098,643.13, accrued and unpaid interest in the amount of \$53,207.89 and fees in the amount of \$1,784.04. Interest continues to accrue daily at the rate provided in Note 2. Attorneys' fees and other costs of collection also continue to accrue.

COUNT I
BREACH OF CONTRACT

19. Synovus incorporates and re-alleges all preceding paragraphs as if fully set forth herein.

20. Defendants are in default of their obligations under the Loan Documents.

21. Defendants have failed to pay Synovus the amounts due under the terms of the Loan Documents.

WHEREFORE, Synovus demands judgment against Defendants for the principal indebtedness outstanding under the Loans, plus accrued and accruing

interest, late charges, and expenses of collection, including attorneys' fees and the costs of this action.

COUNT II
MONEY HAD AND RECEIVED

22. Synovus incorporates and re-alleges all preceding paragraphs as if fully set forth herein.

23. Pursuant to the Loan Documents, Crossroads and/or Guarantors received money or the equivalent value of money that, in equity and good conscience, belongs to Synovus.

24. Synovus is entitled to recover from Defendants the amounts due under the Loan Documents, plus other legally recoverable fees and costs.

WHEREFORE, Synovus demands judgment against Defendants for the principal indebtedness outstanding under the Loans, plus accrued and accruing interest, late charges, and expenses of collection, including attorneys' fees and the costs of this action.

COUNT III
ACCOUNT STATED

25. Synovus incorporates and re-alleges all preceding paragraphs as if fully set forth herein.

26. On or about May 13, 2011, Synovus sent the Demand Letter to Defendants stating the amount owed under the Notes as of that date and demanding, among other things, payment in full of such amount.

27. Upon information and belief, Defendants received the Demand Letter.

28. Defendants have had an opportunity to review the Demand Letter and raise any objections regarding the accuracy of the information contained therein, including, among other things, the amount stated as due.

29. None of the Defendants has ever objected to the amounts set forth in the Demand Letter.

30. Despite demand, Defendants have failed to pay to Synovus the total amount due as set forth in the Demand Letter. Defendants owe said amount to Synovus on account stated.

WHEREFORE, Synovus demands judgment against Defendants for the principal indebtedness outstanding under the Loans, plus accrued and accruing interest, late charges, and expenses of collection, including attorneys' fees and the costs of this action.

/s/ Joe A. Joseph

Joe A. Joseph (JOS004)

D. Charles Holtz (HOLTD7809)

Ricardo A. Woods (WOO109)

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PLAINTIFF'S ADDRESS:

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**PURSUANT TO THE FEDERAL RULES OF CIVIL PROCEDURE,
PLEASE SERVE THE FOLLOWING DEFENDANTS VIA CERTIFIED
MAIL:**

Crossroads, LLC
P.O. Box 1629
Foley, Alabama 36536-1629

Wolf Creek Industries, Inc.
P.O. Box 254
Foley, Alabama 36536-0254

Pennstar, LLC
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